

**THE TEXAS AND PACIFIC RAILROAD
COMPANY, ET AL.**

**BROTHERHOOD OF RAILROAD
TRAINMEN, ET AL.**

**Brief on Behalf of Respondents in Opposition to
Petition for Writ of Certiorari to United
States Circuit Court of Appeals,
Fifth Circuit.**

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Nos. 1500, 1501

In The
**SUPREME COURT OF THE
UNITED STATES**

October Term, 1946

**THE TEXAS AND PACIFIC RAILWAY
COMPANY, ET AL.,**
Petitioners,

Versus

**BROTHERHOOD OF RAILROAD
TRAINMEN, ET AL.,**
Respondents.

**Brief on Behalf of Respondents in Opposition to
Petitions for Writs of Certiorari**

**TO THE HONORABLE, THE SUPREME COURT
OF THE UNITED STATES:**

Notwithstanding the fact that the petitioners have supplied a statement of the case, which is generally correct, a more detailed recitation of the facts is deemed desirable to show the correctness of the decision of the United States Circuit Court of Appeals, Fifth Circuit.

STATEMENT OF FACTS

During the year 1926, the Texas and Pacific Railway Company and the Missouri Pacific Railroad Company consolidated their facilities covering the manning of yard and hostler service in the Alexandria Terminal, Alexandria, Louisiana, and made all of these facilities one common interchangeable yard. The interests of the two sets of employees for the two carriers, represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, became involved. A controversy followed. The respective committees of the three labor organizations having jurisdiction over the terminal facilities, being unable to agree as to the disposition of the issues, invoked the assistance of national officers. An agreement was reached in St. Louis on June 2, 1927, (R. 12-15) and made effective June 20, 1927, jointly executed by a duly authorized representative of each organization, whereby the work in the terminal was apportioned between the employees of the two railroads based upon the ratio of business done at that time by the two carriers at the joint terminal.

Thereafter, J. H. Bromley and R. L. Hickman, both members of Rapides Lodge No. 856 of the Brotherhood of Railroad Trainmen, requested a change in apportionment of work in the Alexandria Terminal on account of the increased ratio of business handled by the Missouri Pacific Railroad in and out of the Alex-

andria Terminal over the ratio of business done by the Texas and Pacific. The request for a change in the apportionment of work was denied by a decision of the chief executives of the three national brotherhoods. An appeal was perfected to the Board of Appeals of the Brotherhood of Railroad Trainmen, and on November 16, 1943, (R. 185-194) the said Board of Appeals reversed the decision of the chief executives, and among other things held:

"The fact that Grand Lodge officers of the three organizations were assigned with general committees of the M. P. and T. & P. Railways as a result of contention of the M. P. men that increase in their proportion of work in the terminal justified a change in the percentage established in 1927 indicates to this board that the Chief Executives recognized that a change in the 1927 percentage figures could be made if such a change was justified. Further, the Board cannot agree that fluctuations of 'ten percent in 1940, twelve percent in 1941 and twenty percent for 7 months in 1942' indicating a progressive increased disparity between the business handled by the two properties, 'does not constitute a change in conditions under the law and policy of our organization,' as held by Vice President Smith and his associate officers."

The Brotherhood of Railroad Trainmen has been making efforts to place into execution the decision of the Board of Appeals since the date of its rendition. The Brotherhood of Railroad Trainmen was tem-

porarily restrained by an order of the 19th Judicial District Court, State of Louisiana, in Bujol et al., v. Missouri Pacific Railroad Company, et al., No. 21,579, from putting into effect the decision of the Board of Appeals. The temporary restraining order was dissolved by the 19th Judicial District Court of the State of Louisiana, after hearing on a rule nisi, and the suit was dismissed at the costs of the plaintiffs. An appeal was perfected to the Supreme Court of Louisiana by the plaintiffs in that case and there the matter rests at the present time.

In the meantime, counsel for the plaintiffs in the Bujol case notified the Texas & Pacific Railway Company that his clients would sue for damages if the contract of June 2, 1927, effective June 20, 1927, were changed under the decision rendered by the Board of Appeals of the Brotherhood of Railroad Trainmen.

The foregoing chronological history of the facts lead to the present litigation. Prior to the institution of the complaint in the lower court, repeated efforts were made by the duly authorized agents of the Brotherhood of Railroad Trainmen to work out a change in the apportionment of work from 55 - 45 to one of 65 - 35, as between Missouri-Pacific and Texas & Pacific yardmen, but the threat of damage suits by the plaintiffs in the Bujol case allegedly prevented the two railroads from perfecting a change as ordered by the Board of Appeals of the Brotherhood of Railroad Trainmen.

STATEMENT OF THE CASE

Basing jurisdiction on diversity of citizenship and on the Railway Labor Act (45 U. S. C. A. §§ 151-164), the carriers filed suit in the District Court of the United States, Western District of Louisiana, against respondents and the individual petitioners herein, seeking a declaratory judgment under Section 274d of the Judicial Code (28 U. S. C. A. § 400) in accordance with the original and amended prayer of their complaint. (R. 10 and R. 124-126, inclusive). It was alleged that respondents were demanding the carriers to negotiate with them regarding a change in the apportionment of work stipulated in the agreement for yard operations in the joint yards at Alexandria, Louisiana, negotiated June 2, 1927, (R. 12-15), while the individual defendants were threatening to sue if a change were made.

Respondents filed a motion to dismiss the complaint for lack of jurisdiction of the subject matter, asserting that:

"The matter in controversy herein is not one of a justiciable nature, and consequently, not subject to judicial review, it being a labor dispute under the Railway Labor Act, 45 U. S. C. A. sec. 151 et seq., and one over which Congress has foreclosed resort to the Courts for enforcement of the claims asserted by plaintiffs." (R. 53).

The decision of the District Court denying the motion to dismiss (R. 62-101) is reported in 60 F.

Supp. 263. The respondents then filed an original and amended answer (R. 102 and 121) admitting that there was a dispute between them and some of their members, as alleged, but denying that the dispute had any just basis in law or in fact. Pointing out that the Railway Labor Board compels the carriers to bargain with the accredited representatives of employees, and that the carriers admitting that the Brotherhood is such an accredited representative, respondents insisted that the existence of the dispute with some of their members supplied no justiciable controversy between them and the carriers, and hence no basis for a declaratory judgment.

A trial on the merits was had and the District Court held that the carriers were not required to amend and to interpret the contract of June 2, 1927, or to confer, negotiate or bargain with the Brotherhood of Railroad Trainmen in its desire to amend and to interpret said contract. The decision on the merits (R. 329-339), is reported in 63 F. Supp. 640. An appeal to the United States Circuit Court of Appeals, Fifth Circuit, was perfected. Six errors were specified, the first two dealing with the lack of jurisdiction over the subject matter and the erroneous action of the lower court in denying the motion to dismiss.

The Circuit Court of Appeals reversed the trial judge (R. 249-359). The opinion is reported in 159 F. 2d 822. (Advance Sheet No. 5, April 14, 1947). The Court held specifically that the complaint presented

no justiciable controversy and that it was a fundamental error on the part of the trial judge not to grant the motion to dismiss. Consequently, the judgment of the lower court was reversed and the cause remanded with directions to dismiss the suit.

ARGUMENT

It is our serious contention that the petitions for a writ of certiorari are without merit and should be denied. Careful study of the decision rendered by the United States Circuit Court of Appeals amply justifies this position. Not only did that Court hold that the complaint presented no justiciable controversy, but it further stated in part that:

*“** There is nothing here to adjudicate. The controversy which the carriers assert has been thrust upon them by the claims of the individual defendants is, as between the carriers and the Brotherhood non-existent. The carriers are under a statutory duty to negotiate with the Brotherhood.”* (Emphasis supplied).

Throughout, respondents have contended that Congress, by the enactment of the Railway Labor Act, has foreclosed resort to the courts for enforcement of the claims asserted by the carriers. The aim of the Railway Labor Act was to obtain simplicity and directness, both in the administrative procedure and on judicial review.

In order to get a clear and concise picture of the aim of the Act, it is necessary to review the pronounced

general purposes of the legislation, which are itemized in 45 U. S. C. A., § 151a. In view of the fact that the carriers alleged that this controversy arose under the Railway Labor Act, it necessarily follows that it must be settled under the provisions of that statute. When consideration is given to the stipulated purposes bearing Nos. 4 and 5 in § 151a, it is manifest that they are applicable to this dispute. If any command should appear in the Act whereby judicial remedy is afforded to enforce any one of the several purposes of the statute, an adherence of that remedy in the courts must prevail. In the absence of any such command, the disposition must be had through the medium of administrative machinery, which means negotiation, arbitration and mediation.

It was specifically held by this Honorable Court in General Committee of Adjustment of Brotherhood of Locomotive Engineers for Missouri-Kansas-Texas R. R. v. Missouri-Kansas-Texas R. Co. et al., 320 U. S., 323, 64 S. Ct. 146, that the command of the Railway Labor Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied. In short, the jurisdiction of a suit under the Railway Labor Act does not exist unless the plaintiff shows a legal right enforceable by the courts. That case supplied a test and furnished a yardstick of guidance for future determination of controversies arising under the statute involved. It was said:

"In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration. See H. Rep. No. 1944, 73d., Cong., 2nd. Sess., p. 2. Courts should not rush in where Congress has not been chosen to tread.

"We are concerned solely with the legal rights under this federal Act which are enforceable by courts. For unless such a right is found it is apparent that this is not a suit or proceeding 'arising under any law regulating commerce' over which the District Court had original jurisdiction by reason of § 24 (8) of the Judicial Code, 28 U.S.C., § 41 (8), 28 U.S.C.A. § 41 (8). Cf. *People of Puerto Rico v. Russell & Co.*, 288 U. S. 476, 483, 53 S. Ct. 447, 449, 77 L. Ed., 903; *Gully v. First Nat. Bank*, 299 U. S. 109, 57 S. Ct. 96, 81 L. Ed., 70; *Peyton v. Railway Express Agency*, 316 U. S. 350, 352, 62 S. Ct. 1171, 1172, 86 L. Ed., 1525. When a court has jurisdiction it has of course 'authority to decide the case either way.' The *Fair v. Kohler Die & Specialty Co.*, 228 U. S., 22, 25, 33, S. Ct., 410, 411, 57 L. Ed. 716. But in this

case no declaratory decree should have been entered for the benefit of any of the parties. Any decision on the merits would involve the granting of judicial remedies which Congress chose not to confer."

There is no general provision for judicial review embodied in the Railway Labor Act. Congress expressly provided for judicial review in only two instances. In this connection, attention is directed to the decision rendered in *Switchmen's Union of North America v. National Mediation Board*, 320 U. S., 297, 64 S. Ct. 95, at page 99, to-wit:

"Thus Congress gave the National Railroad Adjustment Board jurisdiction over disputes growing out of 'grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.' § 3, First (i), 45 U. S. C. A. § 153, subd. 1 (i). The various divisions of the Adjustment Board have authority to make awards. § 3, First (k)-(o). And suits based on those awards may be brought in the federal district courts. § 3, First (p). In such suits 'the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated.' The other instance in the Act where Congress provided for judicial review is under § 9, 45 U. S. C. A. § 159. The Act prescribes machinery for the voluntary arbitration of labor controversies. § 5, Third; § 7; § 8, 45 U. S. C. A. §§ 155, subd. 3, 157, 158. It is provided in § 9 that an award of a board of arbitration may be impeached by an action instituted

in a federal district court on the grounds specified in § 9, one of which is that 'the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act.' § 9, Third (a). When Congress in § 3 and in § 9 provided for judicial review of two types of orders or awards and in § 2 of the same Act omitted any such provision as respects a third type, it drew a plain line of distinction. And the inference is strong from the history of the Act that that distinction was not inadvertent. The language of the Act read in light of that history supports the view that Congress gave administrative action under § 2, Ninth a finality which it denied administrative action under the other sections of the Act."

Likewise, it was shown that the emergence of railway labor problems from the field of conciliation and mediation into that of legally enforceable rights has been quite recent. Until 1926 the legal sanction to the various statutes had been few for the reason emphasis of the legislation had been on conciliation and mediation. However, since 1926 there has been an increase in number of legally enforceable commands incorporated in the Railway Labor Act. Congress has utilized administrative machinery more freely in the settlement of disputes. It was further held:

"But large areas of the field still remain in the realm of conciliation, mediation, and arbitration. On only a few phases of this controversial subject

has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. We need not recapitulate that history here. Nor need we reiterate what we have said in the Missouri-Kansas-Texas R. Co. case beyond our conclusion that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate."

This Honorable Court, in deciding the case from which the quotation above is a part, held that it was for Congress to determine how the rights which it creates shall be enforced. In passing on this point it was said that in such a case the specification of one remedy normally excludes another. It was further stated:

"Generalizations as to when judicial review of administrative action may or may not be obtained are of course hazardous. When Congress has not expressly authorized judicial review, the type of problem involved and the history of the statute in question become highly relevant in determining whether judicial review may be nonetheless supplied. See *United States v. Griffin*, 303 U. S. 226, 232-237, 58 S. Ct. 601, 604-606, 82 L. Ed. 764."

In *Brotherhood of Railroad Trainmen et al. v. Toledo, P. & W. R. R.*, 321 U. S. 413, 64 S. Ct. 413, 418, it was said:

"The Policy of the Railway Labor Act was to encourage use of nonjudicial processes of negotia-

tion, mediation and arbitration for the adjustment of labor disputes. Cf. General Committee of Adjustment of Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. Co., 320 U. S. 338, 64 S. Ct. 142."

We shall now pass on to further consideration of specific provisions of the Railway Labor Act. It is provided in Section 2 of the statute, paragraph first, 45 U. S. C. A., § 152 that it is the mandatory duty of all carriers to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise. Notwithstanding this provision, the two carriers sought a declaratory judgment in the lower court and the primary demand of their prayer was to the effect that they should not be required to negotiate or sign an agreement with the Brotherhood of Railroad Trainmen amending or interpreting the contract of June 2, 1927.

The history of the Railway Labor Act and its particular provisions have a special claim here. Judicial power is sought to be exerted in the enforcement of a right which plaintiffs claim that Congress created. It seems plain that Congress selected a very limited class of disputes to be solved by the courts, while it chose a different machinery for the settlement and adjustment of other controversies. The conclusion is inescapable that Congress carved out of the field of

conciliation, mediation and arbitration only the very select list of problems that it was willing to place in the adjudicatory channel. The remaining bulk was left to the voluntary processes long encouraged by Congress for the protection of interstate commerce from an industrial strife. As was said recently by the Supreme Court, in discussing this phase of the statute, "The concept of mediation is the antithesis of justiciability."

To show conclusively that no justiciable controversy is presented in this case, the decision rendered in *General Committee v. Missouri-Kansas-Texas R. Co.*, *supra*, has peculiar applicability. There it was said:

"But it is apparent on the face of the Act that while Congress dealt with this subject comprehensively, it left the solution of only some of those problems to the courts or to administrative agencies. It entrusted large segments of this field to the voluntary processes of conciliation, mediation, and arbitration. Thus by § 5, First, Congress provided that either party to a dispute might invoke the services of the Mediation Board in a 'dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference' and any other 'dispute not referable' to the Adjustment Board and 'not adjusted in conference between the parties or where conferences are refused.' Beyond the mediation machinery furnished by the Board lies arbitration. § 5, First and Third, § 7. In case both fail there is the Emergency Board which may be established

by the President under § 10. In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate."

Petitioners seem to rely strongly upon the decision of *Steele v. Louisville & N. R. Co., et al.*, 323 U. S. 192, 65 S. Ct. 226. A close study and analysis of that case will show that no comfort is offered therein to support the position, as there is no similarity of facts or of law applicable thereto. The late Chief Justice Stone was organ of the Court and he plainly stated in the first paragraph of the opinion that the question was whether the Railway Labor Act imposes on a labor organization, acting by authority of the statute as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft without discrimination because

of their race, and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation. With the question stated, what possible bearing could that case have directly upon the outcome of this litigation? Nothing is definitely the answer.

It is deemed advisable to point out the several glaring differences embodied in the present dispute. *First, no question of discrimination on account of racism is involved in this proceeding, whereby such existed in the cited case. Secondly, the question here is restricted by the Railway Labor Act to adjustment by recourse to the traditional implements of mediation, conciliation and arbitration or is determinable under the administrative scheme provided by the statute, while there was complete absence of procedure for settlement of the dispute under the Act in the adjudicated case. Thirdly, it was specially held in the Steele Case that the petitioner was without available administrative remedy, resort to which, when available, is prerequisite to equitable relief in the federal courts and that the Railway Labor Act condemned as unlawful the conduct of the carrier. Fourthly, the Brotherhood of Railroad Trainmen is not attempting to commit an illegal act. Finally, in the Steele Case, there were no differences as to the interpretation of the contract which by the Act are committed to the jurisdiction of the Railroad Adjustment Board.*

The holding announced in *Elgin, J. & E. Ry. Co., v. Burley, et al.*, 65 S. Ct. 1282, 325 U. S. 711, 66 S. Ct.

721, 327 U. S. 661, appears peculiarly applicable. In the first decision rendered in this case, which was later sustained on the rehearing, it was said:

"To settle for the future alone, without reference to or effect upon the past, is in fact to bargain collectively, that is, to make a collective agreement. That authority is conferred independently of the power to deal with grievances, as part of the power to contract 'concerning rates of pay, rules, or working conditions.' It includes the power to make a new agreement settling for the future a dispute concerning the coverage or meaning of a pre-existing collective agreement. *For the collective bargaining power is not exhausted by being once exercised; it covers changing the terms of an existing agreement as well as making one in the first place.*" (Emphasis supplied).

It was very pointedly explained in the dissenting opinion of the case quoted from above that rules of fraternal organizations, with all the customs and assumptions that give them life, cannot be treated as though they were ordinary legal documents of settled meaning. Likewise, it was shown that to an increasing extent, courts require dissidents within a union to seek interpretation of the organization's rules and to seek redress for grievances arising out of them before appropriate union tribunals.

The Declaratory Judgment Act specifically provides that a declaratory judgment or decree may be granted whenever necessary or proper. It is submitted that

such a decree by the lower court in this case was not proper for the very simple reason the trial court was without jurisdiction. It is provided in Rule 57 of the Rules of Civil Procedure dealing with declaratory judgments that:

“The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.”

Again it is submitted that a declaratory judgment should not have been entered in this proceeding, because such was not appropriate. The basis of this broad statement is traceable to the decision rendered in *Bradley Lumber Co., v. National Labor Relations Board* (CCA 5), 84 F. (2d) 97, cert. den., 299 U. S. 559, 57 S. Ct. 21, 81 L. Ed. 411, where it was held.

“The power to render a declaratory judgment does not authorize a court to interfere with administrative proceedings at a point where it would not, under settled principles, have interfered with them under its power to enjoin.”

Petitioners in the present proceeding did not venture to contend that the lower court should use its equity jurisdiction and enjoin the Brotherhood of Railroad Trainmen from making effective the decision of its Board of Appeals whereby the agreement of June 2, effective June 20, 1927, would be changed. The provisions of the Norris-LaGuardia Act, 29 U. S. C. A. § 108, would prevent the issuance of injunctive relief.

It was specifically held in *Brotherhood of Railroad Trainmen et al. v. Toledo, P. & W. R. R.*, supra, that the overall policy of the Norris-LaGuardia Act was to encourage the use of the nonjudicial processes of negotiation, mediation and arbitration for the adjustment of labor disputes, as its prime purpose was to restrict the federal equity power in such matters within greatly narrower limits than it had come to occupy and to make injunction a last line of defense available not only after other legally required methods, but after all reasonable methods as well, had been tried and found wanting. It was also said in that case that under the Norris-LaGuardia Act, injunctive relief could be granted only when the complainant had complied with all legal obligations, and had made every reasonable effort to settle the dispute by negotiation and by available governmental machinery of mediation and by available governmental machinery of voluntary arbitration.

There can be no doubt but that the United States Circuit Court of Appeals correctly stated that the cases relied upon by respondents reflect the general rule. The broad scope and binding force of the general rule declared in the *Switchmen's Union* and *General Committee* cases in 320 U. S. cannot be ignored or explained away. The complaint of the carriers is silent and completely devoid of any allegation showing that they are justiciably concerned in the internal dispute between the members and the *Brotherhood of Railroad Trainmen*. The Court of Appeals very pointedly noted that fact. It must be remembered that the carriers are

under a statutory duty to negotiate with the Brotherhood, the accredited representative. Likewise, in default of negotiation, the carriers are subjected to rather severe penalties.

Since the Court of Appeals reached the conclusion that the complaint presented no justiciable controversy and that it was a fundamental error on the part of the trial court not to grant the motion to dismiss, it logically stated that:

"We, therefore, do not reach the second question, whether the judgment was right on the merits."

CONCLUSION

When the pleadings and evidence are considered along with the controlling cases decided by this Honorable Court, cited and quoted from herein, it becomes crystal clear that no justiciable controversy between the carriers and respondents has been alleged or proven. Manifestly, the decision of the Court of Appeals is correct in every aspect. It is submitted that the petitions for a writ of certiorari should be denied.

Respectfully submitted,

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